

85-00435

OFFICE OF THE ATTORNEY GENERAL



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JUL 15 1985

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REVENUE DEPARTMENT

Honorable Frank T. Salter
Judge of Probate, Conecuh County
Evergreen, AL 36401

Deeds - Purchase Money Mortgage -
Deed Tax - Mortgage Tax - Judges
of Probate

Full deed tax should be collected
when purchase money mortgage is
made to a tax exempt entity and
no mortgage tax was collected.

Dear Judge Salter:

Reference is made to your letter addressed to Honorable Charles Graddick, Attorney General of Alabama, in which you request an opinion from this office as to the proper amount of deed and mortgage privilege tax to be collected upon recordation of two instruments.

The first instrument is a deed from Lyvon Hendrix and wife Bama Lee Hendrix to Lorine Rogers conveying a lot worth approximately \$1,500.00. The second instrument involved is a mortgage from Lorine Rogers to Farmers Home Administration, an instrumentality of the United States, reciting an indebtedness of \$32,680.00. Mrs. Rogers has used only \$1,500.00 of the loan from FHA to pay the purchase price of the lot to Mr. and Mrs. Hendrix; and the balance of the loan is being used by Mrs. Rogers to construct a house on said lot. You have stated in your letter that the mortgage, being to a federal instrumentality, is exempt from mortgage privilege tax and has been recorded in your office upon payment of only the recording fees due. You wish to know how much tax you should collect for recordation of the deed from the Hendrixs to Mrs. Rogers.

It is my opinion that you were correct in not collecting any tax upon recordation of the mortgage since said mortgage is


executed to a tax exempt instrumentality. Of course, this does not prevent said mortgage from being a purchase money mortgage as to the purchase price of the lot itself. From the facts contained in your letter it appears that the purchaser did indeed use \$1,500.00 from the proceeds of the loan to pay to the previous owner of this lot the purchase price asked. However, there can be no credit given on the purchase price recited in the deed since the mortgage was to a tax exempt instrumentality and no mortgage tax has been paid. Section 40-22-1, Code of Alabama 1975 mandates the payment of the deed tax, "provided, that only the value in excess of any mortgages or vendor's lien upon any property within this state on which the mortgage tax has been paid shall be taxable under this section." This being true, you must collect deed tax upon the full value of the interest conveyed and in this case the full value of the interest conveyed is the value of the lot itself (since the house has not yet been built) which is \$1,500.00. You must therefore collect \$1.50 deed tax plus whatever recording fees are due.

If we can be of any further service to you, please advise.

Yours very truly,

CHARLES A. GRADDICK
Attorney General

By-


B. FRANK LOEB
Assistant Attorney General

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